

Senate Bill No. 1865

CHAPTER 805

An act to amend Sections 39153, 39675, 42400, 42400.1, 42400.2, 42400.3, 42402, 42402.1, 42402.2, and 42402.3 of, and to add Sections 42400.3.5, 42400.7, 42400.8, and 42402.4 to, the Health and Safety Code, relating to air pollution.

[Approved by Governor September 28, 2000. Filed
with Secretary of State September 28, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1865, Perata. Air pollution: civil and criminal penalties.

(1) Existing law requires the State Air Resources Board, air pollution control districts, and air quality management districts to adopt regulations for classifying and enforcing minor violations, and required the state board to report to the Legislature, on or before January 1, 2000, on the implementation of the regulations. Existing law also provides for the repeal of these provisions on January 1, 2001.

This bill would extend the date for repeal of those provisions to January 1, 2006, and would require a report to the Legislature on actions taken by the state board on or before January 1, 2005. The bill would impose a state-mandated local program by requiring air pollution control districts and air quality management districts to submit information to the state board for purposes of that report.

(2) Existing law provides that any person who emits an air contaminant that causes actual injury, detriment, nuisance, or annoyance to a considerable number of people is guilty of a misdemeanor and subject to a fine, imprisonment, and a civil penalty.

This bill would increase the fine and the maximum time for imprisonment for a violation that causes actual injury.

(3) Existing law provides that any person who negligently emits an air contaminant in violation of any rule, regulation, permit, or order of the state board or a district pertaining to emissions, to be subject to a fine, imprisonment, and a civil penalty.

This bill would increase the maximum fine.

This bill would also provide that any person who negligently emits an air contaminant that causes injury, detriment, nuisance, or annoyance to a considerable number of persons that also causes great bodily injury, as defined, to, or death of, any person is guilty of a misdemeanor and subject to a fine, imprisonment, and a civil penalty.

(4) Existing law provides that any person who emits an air contaminant in violation of any rule, regulation, permit, or order of the state board or a district pertaining to emissions, and who knew

of the emission and failed to correct the violation within a reasonable period of time is subject to a fine, imprisonment, and a civil penalty.

This bill would increase the maximum fine and penalty.

This bill would also provide that any person who owns or operates any source of an air contaminant that causes injury, detriment, nuisance, or annoyance to a considerable number of persons that also causes great bodily injury, as defined, to, or death of, any person and who knew of the emission and failed to take corrective action within a reasonable time is guilty of a misdemeanor and subject to a specified fine and penalty.

(5) Existing law provides that any person who willfully and intentionally emits an air contaminant in violation of any rule, regulation, permit, or order of the state board or a district pertaining to emissions is subject to a specified fine, imprisonment, and penalty.

This bill would expand that provision to include any person who willfully and intentionally or with reckless disregard for the risk of great bodily injury or death, emits an air contaminant that results in great bodily injury or death. This bill would also increase the maximum allowable fine and civil penalty. The bill would also provide that any person who emits an air contaminant that causes injury, detriment, nuisance, or annoyance to a considerable number of persons, that results in any unreasonable risk of, or that causes great bodily injury to, or death of, any person, and who does so willfully, intentionally, or with reckless disregard for the risk is guilty of a misdemeanor and subject to a specified fine and penalty.

This bill would also provide for a higher maximum allowable penalty for corporate violators.

(6) Existing law provides that the recovery of a civil penalty for an air quality violation precludes criminal prosecution, and that the filing of a criminal complaint requires the dismissal of any civil action for the same offense.

This bill would exempt from that requirement any portion of a civil action requesting injunctive relief.

(7) Existing law provides specified circumstances for a court to consider in determining the amount of civil penalty to assess a violator of specified air pollution provisions.

This bill would require that a court consider the same circumstances when considering the amount of criminal fine to impose on a violator of specified air pollution provisions.

(8) Existing law provides that any person who knowingly, and with intent to deceive, falsifies any document required to be kept pursuant to any rule, regulation, permit, or order of the state board or a district pertaining to emissions is subject to a civil penalty.

This bill would increase the maximum allowable civil penalty, and would provide that the person is guilty of a misdemeanor and subject to a fine and imprisonment.

This bill would create additional crimes and would expand the scope of existing crimes, thereby imposing state-mandated local programs.

(9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 39153 of the Health and Safety Code is amended to read:

39153. (a) On or before January 1, 2005, the state board shall report to the Legislature on actions taken by the state board and the districts to implement this chapter and the results of that implementation. Each district shall provide the state board with the information that the state board requests to determine the degree to which the purposes described in subdivision (a) of Section 39150 have been achieved.

(b) This chapter shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2006, deletes or extends that date.

SEC. 2. Section 39675 of the Health and Safety Code is amended to read:

39675. (a) Sections 42400, 42400.1, 42400.2, and 42402.2 apply to violations of regulations or orders adopted pursuant to Section 39659 or Article 4 (commencing with Section 39665) or that are implemented and enforced as authorized by subdivision (b) of Section 39658.

(b) The adoption of this section does not constitute a change in, but is declaratory of, existing law.

SEC. 3. Section 42400 of the Health and Safety Code is amended to read:

42400. (a) Except as otherwise provided in Section 42400.1, 42400.2, 42400.3, 42400.3.5, or 42400.4, any person who violates this part, or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, adopted pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with

Section 41500), inclusive, is guilty of a misdemeanor and is subject to a fine of not more than one thousand dollars (\$1,000) or imprisonment in the county jail for not more than six months, or both.

(b) If a violation under subdivision (a) with regard to the failure to operate a vapor recovery system on a gasoline cargo tank is directly caused by the actions of an employee under the supervision of, or of any independent contractor working for, any person subject to this part, the employee or independent contractor, as the case may be, causing the violation is guilty of a misdemeanor and is punishable as provided in subdivision (a). That liability shall not extend to the person employing the employee or retaining the independent contractor, unless that person is separately guilty of an action that violates this part.

(c) Any person who owns or operates any source of air contaminants in violation of Section 41700 that causes actual injury, as defined in subdivision (d), to the health or safety of a considerable number of persons or the public is guilty of a misdemeanor and is subject to a fine of not more than fifteen thousand dollars (\$15,000) or imprisonment in the county jail for not more than nine months, or both.

(d) As used in this section, “actual injury” means any physical injury that, in the opinion of a licensed physician and surgeon, requires medical treatment involving more than a physical examination.

(e) Each day during any portion of which a violation of subdivision (a) or (c) occurs is a separate offense.

SEC. 4. Section 42400.1 of the Health and Safety Code is amended to read:

42400.1. (a) Any person who negligently emits an air contaminant in violation of any provision of this part or any rule, regulation, permit, or order of the state board or of a district pertaining to emission regulations or limitations is guilty of a misdemeanor and is subject to a fine of not more than twenty-five thousand dollars (\$25,000) or imprisonment in the county jail for not more than nine months, or both.

(b) Any person who negligently emits an air contaminant in violation of Section 41700 that causes great bodily injury, as defined by subdivision (e) of Section 12022.7 of the Penal Code, to, or death of, any person, is guilty of a misdemeanor and is subject to a fine of not more than one hundred thousand dollars (\$100,000) or imprisonment in the county jail for not more than one year, or both.

(c) Each day during any portion of which a violation occurs is a separate offense.

SEC. 5. Section 42400.2 of the Health and Safety Code is amended to read:

42400.2. (a) Any person who emits an air contaminant in violation of any provision of this part, or any order, rule, regulation,

or permit of the state board or of a district pertaining to emission regulations or limitations, and who knew of the emission and failed to take corrective action within a reasonable period of time under the circumstances, is guilty of a misdemeanor and is subject to a fine of not more than forty thousand dollars (\$40,000) or imprisonment in the county jail for not more than one year, or both.

(b) For purposes of this section, “corrective action” means the termination of the emission violation or the grant of a variance from the applicable order, rule, regulation, or permit pursuant to Article 2 (commencing with Section 42350). If a district regulation regarding process upsets or equipment breakdowns would allow continued operation of equipment which is emitting air contaminants in excess of allowable limits, compliance with that regulation is deemed to be corrective action.

(c) Any person who owns or operates any source of air contaminants in violation of Section 41700 that causes great bodily injury, as defined by subdivision (e) of Section 12022.7 of the Penal Code, to, or death of, any person, and who knew of the emission and failed to take corrective action within a reasonable period of time under the circumstances, is guilty of a misdemeanor and is subject to a fine of not more than two hundred fifty thousand dollars (\$250,000) or imprisonment in the county jail for not more than one year, or both.

(d) Each day during any portion of which a violation occurs constitutes a separate offense.

SEC. 6. Section 42400.3 of the Health and Safety Code is amended to read:

42400.3. (a) Any person who willfully and intentionally emits an air contaminant in violation of any provision of this part or any rule, regulation, permit, or order of the state board or of a district, pertaining to emission regulations or limitations is guilty of a misdemeanor and is subject to a fine of not more than seventy-five thousand dollars (\$75,000), or imprisonment in the county jail for not more than one year, or both.

(b) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by subdivision (e) of Section 12022.7 of the Penal Code, to, or death of, any person, emits an air contaminant in violation of Section 41700 that results in any unreasonable risk of great bodily injury to, or death of, any person, is guilty of a public offense and is subject to a fine of not more than one hundred twenty-five thousand dollars (\$125,000) or imprisonment in the county jail for not more than one year, or both. However, if the defendant is a corporation, the maximum fine may be up to five hundred thousand dollars (\$500,000).

(c) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by subdivision (e) of Section 12022.7 of the Penal Code, to, or death of, any person,



emits an air contaminant in violation of Section 41700 that causes great bodily injury to, or death of, any person is guilty of a public offense, and is subject to a fine of not more than two hundred fifty thousand dollars (\$250,000) or imprisonment in the county jail for not more than one year, or both, or is subject to a fine of not more than two hundred fifty thousand dollars (\$250,000) or imprisonment in the state prison, or both. If the defendant is a corporation, the maximum fine may be up to one million dollars (\$1,000,000).

(d) Each day during any portion of which a violation occurs constitutes a separate offense.

(e) This section does not preclude punishment under Section 189 or 192 of the Penal Code or any other provision of law that provides a more severe punishment.

(f) For the purposes of this section:

(1) “Great bodily injury” means great bodily injury as defined by subdivision (e) of Section 12022.7 of the Penal Code.

(2) “Imprisonment in state prison” means imprisonment in the state prison for 16 months, or two or three years.

(3) “Unreasonable risk of great bodily injury or death” means substantial probability of great bodily injury or death.

SEC. 7. Section 42400.3.5 is added to the Health and Safety Code, to read:

42400.3.5. (a) Any person who knowingly violates any rule, regulation, permit, order, fee requirement, or filing requirement of the state board or of a district, including a district hearing board, that is adopted for the control of toxic air contaminants pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, and for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (l) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(l)), or the regulations adopted pursuant thereto, is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000) or imprisonment in the county jail for not more than six months, or both.

(b) Any person who knowingly makes any false material statement, representation, or certification in any form or in any notice or report required by a rule or regulation adopted or permit issued for the control of toxic air contaminants pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, and for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (l) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(l)), or the regulations adopted pursuant thereto, or who knowingly renders inaccurate any monitoring device required by that toxic air contaminant rule, regulation, or permit is subject to a fine of not more than thirty-five thousand dollars (\$35,000) or



imprisonment in the county jail for not more than nine months, or both.

(c) Any person who, knowingly and with intent to deceive, falsifies any document required to be kept pursuant to any provision of this part, or any rule, regulation, permit, notice to comply, or order of the state board or of a district, is punishable as provided in subdivision (b).

(d) Subdivisions (a) and (b) shall apply only to those violations that are not otherwise subject to a fine of ten thousand dollars (\$10,000) or more pursuant to Section 42400.1, 42400.2, or 42400.3.

SEC. 8. Section 42400.7 is added to the Health and Safety Code, to read:

42400.7. (a) The recovery of civil penalties pursuant to Section 39674, 42401, 42402, 42402.1, 42402.2, 42402.3, or 42402.4 precludes prosecution under Section 42400, 42400.1, 42400.2, 42400.3, 42400.3.5, or 42400.4 for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this article for the same offense.

(b) If the pending civil action described in subdivision (a) includes a request for injunctive relief, that portion of the civil action shall not be dismissed upon the filing of a criminal complaint for the same offense.

SEC. 9. Section 42400.8 is added to the Health and Safety Code, to read:

42400.8. In determining the amount of fine to impose pursuant to Sections 42400, 42400.1, 42400.2, 42400.3, 42400.3.5, and 42400.4, the court shall consider all relevant circumstances, including, but not limited to, the following:

- (a) The extent of harm caused by the violation.
- (b) The nature and persistence of the violation.
- (c) The length of time over which the violation occurs.
- (d) The frequency of past violations.
- (e) The record of maintenance.
- (f) The unproven or innovative nature of the control equipment.
- (g) Any action taken by the person including the nature, extent, and time of response of any cleanup and construction undertaken, to mitigate the violation.
- (h) The financial burden on the defendant.
- (i) Any other circumstances the court deems relevant.

SEC. 10. Section 42402 of the Health and Safety Code is amended to read:

42402. (a) Except as provided in Sections 42402.1, 42402.2, 42402.3, and 42402.4, any person who violates this part, any order issued pursuant to Section 42316, or any rule, regulation, permit, or order of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 39000) to

Part 4 (commencing with Section 41500), inclusive, is strictly liable for a civil penalty of not more than one thousand dollars (\$1,000).

(b) (1) Any person who violates any provision of this part, any order issued pursuant to Section 42316, or any rule, regulation, permit or order of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is strictly liable for a civil penalty of not more than ten thousand dollars (\$10,000).

(2) (A) If a civil penalty in excess of one thousand dollars (\$1,000) for each day in which a violation occurs is sought, there is no liability under this subdivision if the person accused of the violation alleges by affirmative defense and establishes that the violation was caused by an act that was not the result of intentional nor negligent conduct.

(B) Subparagraph (A) shall not apply to a violation of federally enforceable requirements that occur at a Title V source in a district in which a Title V permit program has been fully approved.

(C) Subparagraph (A) does not apply to a person who is determined to have violated an annual facility emissions cap established pursuant to a market based incentive program adopted by a district pursuant to subdivision (b) of Section 39616.

(c) Any person who owns or operates any source of air contaminants in violation of Section 41700 that causes actual injury, as defined in subdivision (d) of Section 42400, to the health and safety of a considerable number of persons or the public, is liable for a civil penalty of not more than fifteen thousand dollars (\$15,000).

(d) Each day during any portion of which a violation occurs is a separate offense.

SEC. 11. Section 42402.1 of the Health and Safety Code is amended to read:

42402.1. (a) Any person who negligently emits an air contaminant in violation of this part or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, pertaining to emission regulations or limitations is liable for a civil penalty of not more than twenty-five thousand dollars (\$25,000).

(b) Any person who negligently emits an air contaminant in violation of Section 41700 that causes great bodily injury, as defined by subdivision (e) of Section 12022.7 of the Penal Code, to any person or that causes the death of any person, is liable for a civil penalty of not more than one hundred thousand dollars (\$100,000).

(c) Each day during any portion of which a violation occurs is a separate offense.

SEC. 12. Section 42402.2 of the Health and Safety Code is amended to read:

42402.2. (a) Any person who emits an air contaminant in violation of any provision of this part, or any order, rule, regulation, or permit of the state board or of a district, including a district hearing board, pertaining to emission regulations or limitations, and who

knew of the emission and failed to take corrective action, as defined in subdivision (b) of Section 42400.2, within a reasonable period of time under the circumstances, is liable for a civil penalty of not more than forty thousand dollars (\$40,000).

(b) Any person who owns or operates any source of air contaminants in violation of Section 41700 that causes great bodily injury, as defined by subdivision (e) of Section 12022.7 of the Penal Code, to any person or that causes the death of any person, and who knew of the emission and failed to take corrective action, as defined in subdivision (b) of Section 42400.2, within a reasonable period of time under the circumstances, is liable for a civil penalty not to exceed two hundred fifty thousand dollars (\$250,000).

(c) Each day during any portion of which a violation occurs is a separate offense.

SEC. 13. Section 42402.3 of the Health and Safety Code is amended to read:

42402.3. (a) Any person who willfully and intentionally emits an air contaminant in violation of this part or any rule, regulation, permit, or order of the state board, or of a district, including a district hearing board, pertaining to emission regulations or limitations, is liable for a civil penalty of not more than seventy-five thousand dollars (\$75,000).

(b) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by subdivision (e) of Section 12022.7 of the Penal Code, to, or death of, any person, emits an air contaminant in violation of Section 41700 that results in an unreasonable risk of great bodily injury to, or death of, any person, is liable for a civil penalty of not more than one hundred twenty-five thousand dollars (\$125,000). If the violator is a corporation, the maximum penalty may be up to five hundred thousand dollars (\$500,000).

(c) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by subdivision (e) of Section 12022.7 of the Penal Code, to, or death of, any person, emits an air contaminant in violation of Section 41700 that causes great bodily injury, as defined by subdivision (e) of Section 12022.7 of the Penal Code, to any person or that causes the death of any person, is liable for a civil penalty of not more than two hundred fifty thousand dollars (\$250,000). If the violator is a corporation, the maximum penalty may be up to one million dollars (\$1,000,000).

(d) Each day during any portion of which a violation occurs is a separate offense.

SEC. 14. Section 42402.4 is added to the Health and Safety Code, to read:

42402.4. Any person who knowingly and with intent to deceive, falsifies any document required to be kept pursuant to any provision of this part, or any rule, regulation, permit, or order of the state board

or of a district, including a district hearing board, is liable for a civil penalty of not more than thirty-five thousand dollars (\$35,000).

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

